

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

December 15, 2008

[REDACTED]
Arlington, VA 222 [REDACTED]

Dear [REDACTED]

This letter responds to your administrative appeal (the "Appeal") to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-351 *et seq.* ("DC-FOIA"), dated November 25, 2008. We forwarded your appeal to the Child and Family and Services Agency (CFSA) with a request for a response. CFSA did not submit a response to your appeal. The foregoing represents the appellate record, upon which this decision is based.

Background

On July 16, 2008, you submitted a request to CFSA, request information regarding the processing of your application for adoption. Specifically, you alleged that CFSA refused to accept the home study or portions of the home study which was conducted by the Diatz Foundation. On October 20, 2008, you submitted a FOIA request, seeking "all documents . . . which CFSA are [sic] using to justify their decision not to accept a home study from a licensed child placement agency operating in Washington, DC." On October 21, 2008, CFSA responded to you by letter, indicating that they had received your request and informing you of the costs associated with processing your request. Finally, on November 24, 2008, CFSA replied to your FOIA request, stating that your home study had not been rejected by CFSA but that since you had not completed the entire licensing process, it was still necessary for you to have some portions of the home study completed by CFSA. CFSA further provided you with the contact information necessary to expedite the processing of your application.

Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code 2001 Ed. §2-531. In furtherance of this policy, when searching for documents pursuant to a FOIA request, a public

body should make "reasonable" efforts to search for the requested records. *Id.* §2-532(a-2). However, a search is not presumed unreasonable simply because it fails to produce all relevant material. See *Doe v. D.C. Metro Dep't*, 948 A.2d 1210, 1221 (2008) (citing *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (1990)). Furthermore, an agency is not required to produce records that they do not maintain in the ordinary course. Also, agencies are not obligated to create or search for documents not within their possession or control. *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980).

We interpret your appeal as an indication that you believe CFSA's lack of response to your initial FOIA request to be a denial. However, as evidenced by the record, CFSA responded to your initial FOIA request on November 24, 2008, one day before you filed your appeal on November 25, 2008, rendering the basis of your appeal as moot. Therefore, we hereby DISMISS your appeal.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,

Runako Allsopp
Deputy General Counsel
Executive Office of the Mayor

cc: Ms. Dianne Hall-Simpson
FOIA Officer
District of Columbia
Child and Family Services Agency
Office of the General Counsel